

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Tony Hammond

Competitive Product Prices
International Business Reply Service
Competitive Contract 3 (MC2011-21)
Negotiated Service Agreement

Docket No. CP2016-152

ORDER APPROVING ADDITIONAL INTERNATIONAL BUSINESS REPLY SERVICE
COMPETITIVE CONTRACT 3 NEGOTIATED SERVICE AGREEMENT

(Issued April 26, 2016)

I. INTRODUCTION

The Postal Service seeks to include an additional International Business Reply Service Competitive Contract 3 (IBRS 3) agreement (Agreement) within the IBRS 3 product.¹ For the reasons discussed below, the Commission approves the Postal Service's request.

¹ Notice of the United States Postal Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, April 15, 2016 (Notice).

II. BACKGROUND

Agreements included within the International Business Reply Service (IBRS) Competitive Contract 3 product permit U.S.-based businesses selling lightweight articles in foreign countries to offer their customers a convenient method of returning the articles to the United States for recycling, refurbishment, repair, or other value-added processing. The businesses supply postage-prepaid IBRS packaging to their foreign customers to return the used or defective articles. Pursuant to an IBRS Competitive Contract 3 agreement, the businesses pay the Postal Service a negotiated price for each returned article.

On April 15, 2016, in accordance with 39 C.F.R. § 3015.5, the Postal Service filed its Notice, along with supporting documents. In the Notice, the Postal Service asserts that the Agreement is functionally equivalent to the baseline agreement for the IBRS 3 product and requests that the Agreement be added to the existing IBRS 3 product. Notice at 2. Among the supporting documents, the Postal Service included a copy of the Governors' Decision authorizing the IBRS 3 product, the Agreement proposed to be added to the product, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the Agreement, customer-identifying information, and related financial information remain under seal. *Id.* Attachment 4.

The Agreement is intended to take effect May 1, 2016. Notice at 3. It is set to expire two years after the effective date. *Id.* at 4.

In Order No. 3246, the Commission provided public notice of the Postal Service's filing; established the instant docket for consideration of the filing's consistency with applicable statutory policies and Commission regulations; appointed a Public Representative; and provided an opportunity to comment.²

² Notice and Order Concerning Additional International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, April 18, 2016 (Order No. 3246).

III. COMMENTS

The Public Representative filed comments on April 22, 2016.³ No other comments were received.

Based upon a review of the Postal Service's filing, including the information filed under seal with the Commission, the Public Representative concludes that the Agreement is functionally equivalent to the baseline agreement. PR Comments at 3. He states that it appears negotiated prices, which include an annual price adjustment mechanism, should generate sufficient revenue to cover costs and thus comply with 39 U.S.C. § 3633. *Id.* For these reasons, he recommends including the Agreement within the IBRS Competitive Contract 3 product. *Id.* at 3-4.

IV. COMMISSION ANALYSIS

The Commission's responsibilities in this case are to ensure that the Agreement: (1) is functionally equivalent to the baseline agreement established for the IBRS 3 product; and (2) satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules (39 C.F.R. §§ 3015.5 and 3015.7).

Functional equivalence. In Order No. 684, the Commission added IBRS Competitive Contract 3 to the competitive product list and designated an agreement as the baseline agreement for assessing the functional equivalence of agreements proposed for inclusion within the IBRS Competitive Contract 3 product.⁴

The Postal Service asserts that its filing demonstrates that the Agreement is functionally equivalent to the baseline agreement, and requests that the Agreement be included within the IBRS 3 product. Notice at 4. It asserts that the Agreement fits within the draft Mail Classification Schedule language for the IBRS 3 product. *Id.* at 3. The

³ Public Representative Comments on Postal Service Notice of Filing a New International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, April 22, 2016 (PR Comments).

⁴ See Docket Nos. MC2011-21 and CP2011-59, Order Approving International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, February 28, 2011, at 6 (Order No. 684).

Postal Service also asserts that the Agreement and the baseline agreement possess similar cost and market characteristics and the same functional terms, but states that prices may differ. *Id.* at 4-5. The Postal Service identifies numerous differences between the Agreement and the baseline agreement, but asserts that these differences do not affect the fundamental service being offered or the fundamental structure of the Agreement.⁵

The Commission has reviewed the Postal Service's reasons for asserting that the Agreement shares similar cost and market characteristics with the baseline agreement; meets the pricing formula and falls within the classification established in the Governors' Decision authorizing this product; and comports with 39 U.S.C. § 3633 and applicable Commission rules. It also has considered the Public Representative's comments. The Commission concludes that the Agreement is substantially similar to the baseline agreement and that the differences between them do not fundamentally alter either the service the Postal Service will provide under the Agreement or the structure of the Agreement. The Commission therefore finds that the Agreement may be included within the IBRS 3 product.

Cost considerations. The Commission reviews each competitive product to ensure that it covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by a product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, a product that covers its attributable costs is likely to comply with 39 U.S.C. § 3633(a).

The Commission has reviewed the Postal Service's filing, including supporting financial analyses provided under seal, and the Public Representative's comments.

⁵ Differences include, among others, revisions to existing articles, the deletion of Annex 2 and references to it, and the inclusion of a new article. *Id.* at 5-6.

Based on this review, the Commission finds that the Agreement should cover its attributable costs. The addition of the Agreement to the IBRS 3 product will not cause cost coverage for the product to fall below 100 percent because, as the Commission found in the FY 2015 Annual Compliance Determination (ACD), the product as a whole covers its attributable costs.⁶ Consequently, the Commission finds that the addition of the Agreement to the IBRS 3 product should allow the product to continue to comply with 39 U.S.C. § 3633(a)(2). Because it finds that the addition of the Agreement to the IBRS 3 product should allow the product to cover its attributable costs, the Commission finds that the addition of the Agreement to the product should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the addition of the Agreement to the IBRS 3 product is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). Accordingly, a preliminary review of the Agreement indicates it is consistent with section 3633(a). The Commission will review the Agreement's cost coverage, the cost coverage of the IBRS 3 product, and the contribution of competitive products as a whole to the Postal Service's institutional costs in the ACD to ensure that they continue to comply with 39 U.S.C. § 3633(a).

Rate changes. The Agreement, like previous IBRS competitive agreements, includes clauses addressing cost increases and contingent pricing that allow the Postal Service flexibility to change rates without entering into a new agreement. The Commission addressed the implications of contingency pricing clauses in Order No. 178 and concluded that the Postal Service must file notice of rate changes occurring under such clauses pursuant to 39 C.F.R. § 3015.5 and provide a minimum of 15 days' notice.⁷

⁶ Docket No. ACR2015, *Annual Compliance Determination*, March 28, 2016, at 84, 90.

⁷ Docket Nos. MC2009-14 and CP2009-20, Order Concerning International Business Reply Service Contract 1 Negotiated Service Agreement, February 5, 2009, at 10 (Order No. 178).

Other considerations. The intended effective date of the Agreement is May 1, 2016. Notice at 3. The Postal Service shall promptly notify the Commission should there be a change in the effective date of the Agreement. The contract is set to expire two years after the effective date unless the Agreement is terminated earlier. *Id.* at 4. If the Agreement is terminated prior to the scheduled expiration date, the Postal Service shall promptly file notice of such termination with the Commission in this docket.

V. ORDERING PARAGRAPHS

It is ordered:

1. The Agreement filed in Docket No. CP2016-152 is included within the International Business Reply Service Competitive Contract 3 (MC2011-21) product. The revision to the Mail Classification Schedule appears below the signature of this Order and is effective immediately.
2. The Postal Service shall promptly notify the Commission should there be a change in the effective date of the Agreement.
3. The Postal Service shall promptly file notice of the Agreement's termination with the Commission in this docket if the Agreement is terminated prior to the scheduled expiration date.

By the Commission.

Stacy L. Ruble
Secretary

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2500 Negotiated Service Agreements

2515 Inbound International

2515.3 International Business Reply Service (IBRS) Competitive Contracts

2515.3.5 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- International Business Reply Service Competitive Contract 3

Baseline Reference

Docket Nos. MC2011-21 and CP2011-59

PRC Order No. 684

Included Agreements

CP2016-152, expires April 30, 2018
